

# Adult Social Care & Health

## Complaints Policy and Procedure

### Version 6.2

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This document will be reviewed on a regular basis – if you would like to make any comments, amendments, additions etc. please email the quality team at [ASCH.adultcare.policy@derbyshire.gov.uk](mailto:ASCH.adultcare.policy@derbyshire.gov.uk)

## Policy

It is our policy to provide people and their representatives with an accessible, effective, and fair means of challenging decisions or complaining about the quality and nature of services provided by adult social care and health. We welcome any comments and need you to tell us when we don't get things quite right. We want to work with you to help you resolve your concerns as quickly as possible.

The Adult Social Care and Health (ASCH) department is committed to being open and accountable. When concerns are received the department will determine how best to manage your concerns in a fair and proportionate manner.

ASCH colleagues at all levels have a responsibility to listen to feedback from people who access our services and to learn from mistakes.

Complainants (the person making the complaint) will be kept informed of response timescales and where there has been identified learning, what we aim to do to improve the departments services. The department will openly demonstrate learning and corrective actions made as a result.

Where colleagues can resolve a problem within 24 hours it will be recorded as informal negative feedback without the need for the more formal complaints process to be entered.

We treat as a complaint any expression of dissatisfaction with our service, which calls for some form of investigation and response. We listen to your complaints, treat them seriously, and learn from them so that we can continuously improve our services.

This complaints policy does not affect the right of an individual or organisation to approach an elected member for advice or assistance.

ASCH will work together with health partners and other organisations to follow the joint protocol agreement for dealing with complaints. This will ensure there is a clear, joint response on most occasions.

## Legal Framework

This policy addresses the responsibilities identified in:

- [Health and Social Care \(Community Health and Standards\) Act 2003](#)
- [The Care Act 2014](#)
- [Local Authority Social Services and NHS Complaints \(England\) Regulations 2009](#)
- [Local Authority Social Services and NHS Complaints \(England\) \(Amendment\) Regulations 2009](#)
- [Local Government Social Care Ombudsman's Guidance on Effective Complaint Handling for Local Authorities](#)
- [General Data Protection Regulation \(GDPR\)](#)
- [The Accessible Information standard](#)

## Complaints Procedure

Details of the administrative processes and guidance for the investigator and managers for that service area are contained in the Complaint, Enquiry, Informal Feedback or Compliment Practice Guidance.

Complaints will be acknowledged, and an anticipated response timescale given within 3 working days of receipt (this is a statutory requirement).

The group manager responsible for the service area/s covered by the complaint is responsible for its investigation.

The complainant will, if clarification is needed, be contacted to discuss the details of a complaint and to agree the next steps.

The group manager will be responsible for ensuring that timescales are complied with, and that the complainant is kept informed throughout the process.

A written response will be sent within the agreed timescale given in the acknowledgement.

The department's standard timescales are:

- 20 working days of the acknowledgement for the majority of complaints
- 40 working days from the acknowledgement where more complex investigations are required

The complainant will be informed in writing within the initial timescale if it is identified that a full investigation and response will take longer than previously stated and given the reason for this along with the revised timescale.

In exceptional circumstances there may be times when the standard timescales for complaint and enquiry responses need to be adjusted.

Responses will be considerate, and where we can, we will:

- offer solutions where possible
- give an explanation of actions taken
- apologise if appropriate
- avoid jargon
- include learning points
- include contact details in any final response for the Local Government Social Care Ombudsman (LGSCO) to enable the complainant to pursue the matter with them if they are unhappy with the investigation.

## Time Limit on Making a Complaint

Complaints must be made no later than 12 months from the date of the matter causing concern or the date on which the matter being complained about came to the notice of the complainant. Any exception to this can be negotiated and agreed by the designated complaints manager.

## Who Can Complain?

People are eligible to make a complaint when the local authority has a power or duty to provide or secure a service to or for them.

A complaint may be made by:

- a person who receives or has received services
- a person who is affected, or is likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint

Some complaints may fall outside the scope of these regulations but may be considered under the council [Corporate Complaints Procedure](#).

## Who Can Complain on Behalf of Someone Else?

A complaint may be made by a representative acting on behalf of an eligible person who:

- has died
- has requested the representative to act on their behalf, where there is evidence that consent has been given
- is unable to make the complaint themselves because of:
  - physical incapacity, or
  - lack of capacity within the meaning of the [Mental Capacity Act 2005](#)

This person is then referred to as the 'complainant'.

The authority has the discretion to decide whether the complainant is suitable to act as a representative in the person's best interests.

If the complaints manager considers them to be unsuitable, the complaint must not be further considered under these regulations and the reasons for this decision given in writing.

## Anonymous Complaints

Anonymous complaints will always be recorded in the same way as other complaints. However, they do fall outside the statutory procedure, and it is up to the authority to decide what follow up action should be taken. The anonymity does not in itself justify a decision not to investigate nor should it rule out referral to other procedures as appropriate.

## How Can a Complaint Be Made?

People are advised in the first instance to approach the appropriate member of staff with their concerns for local resolution. If they remain dissatisfied, the formal complaints procedure should be followed.

A complaint can be taken by any member of staff and may be made:

- in person

- by phone (01629 532236)
- by letter (to: Quality Team, Adult Social Care and Health, County Hall, Matlock, Derbyshire, DE4 3AG)
- by email (to: [your.views@derbyshire.gov.uk](mailto:your.views@derbyshire.gov.uk))
- by the 'Putting People First Comments, Compliments and Complaints' leaflet

If the complaint is not received in writing, the details will be noted and confirmed with the complainant before passing for recording and then investigation by an appropriate manager.

Complaints will be acknowledged in writing within three working days unless the complainant is happy to accept acknowledgement over the phone.

Colleagues should routinely issue the Putting People First leaflet to people they work with and encourage feedback.

Information on advocacy advice is available to all complainants on the council's [website](#).

Printed copies of information should be provided to complainants wherever required.

### **Commissioned Services: Independent Social Care Provider/ Care Standards Complaints**

It is the council's responsibility to ensure that complaints relating to services provided by a Care Quality Commission (CQC) regulated care provider working on behalf of the local authority's ASCH department are dealt with satisfactorily as it remains responsible for the actions of those providers.

There is an expectation that, where a complaint is about an independent or voluntary sector service commissioned by the ASCH department, the provider will initially be given the opportunity to investigate and respond directly to the complainant. Where the complainant remains dissatisfied, the ASCH department will consider the complaint within these procedures.

If the complaint relates to an individual who is receiving or has received ASCH services, it will be investigated, managed, and responded to by the relevant adult care team.

If the complaint relates to an individual but there are also general concerns regarding the independent provider, a joint investigation and response may be required by adult care and the contracts and compliance service, with the former acting as the lead.

If an independent care provider has concerns regarding an employee or activity of Derbyshire County Council that we contract with, then they should initially contact the adult social care contracts team.

### **Strength Based Support Adjudication Process - For Complaints Challenging Professional Decisions in Strength based Support assessments**

Where a person wishes to challenge the outcome of their care act assessment or the allocated budget, they should contact the service manager of the team which completed their assessment to ask for a review of the assessment process.

The manager will complete the review and confirm whether their assessment has been completed according to agreed policies and procedures.

If the service manager identifies that the assessment doesn't comply with a policy, procedure or the relevant practice standards and legislation then they will arrange for a new assessment to be completed by another appropriately qualified and experienced officer of ASCH. If the indicative budget appears insufficient to meet eligible needs the service manager should overwrite the fund allocation.

If the person remains unhappy with the re-assessment or revised allocation the service manager should refer to the adult social care complaints process.

### **Disputed Financial Assessments**

In all cases where the financial assessment is in dispute, the individual and/or complainant will be sent an explanation of how the financial assessment has been completed. Any disputes about financial assessments must be registered with the authority within 12 months of the completion of the financial assessment.

In some cases where there is a pre-placement dispute, it may be appropriate to consider a funded residential placement for up to 6 weeks to resolve that dispute and facilitate appropriate placement or discharge from hospital.

Individuals or their representatives questioning the assessment made by the client financial services team will have the opportunity of having their case reviewed by the principal finance officer if initial investigations by the client financial services team is unable to resolve the issue.

In the event that the individual and or complainant remains dissatisfied with this decision and feel that there is information that has not been reviewed this can be processed through the ASCH complaints procedure and referred to the financial assurance review meeting.

### **Financial Contribution Review**

Where an individual believes that a mistake has been made in the determination of their contribution or that making the payment would be unreasonable or impracticable, they are entitled to request a review of the assessment.

In the event that the individual and or complainant remains dissatisfied with this decision and feel that there is additional information that has not been taken into consideration this can be processed through the ASCH complaints procedure and referred to the financial assurance review meeting.

### **Third Party Contributions**

Practitioners will always work with individuals and families to source suitable services without a third party top up fee. However, in circumstances where a third party top up arrangement is already established and third party payor wishes to challenge or has concerns about the top-up arrangement this will be considered under the ASCH complaints procedure and will be reviewed at the financial assurance review meeting.

### **Financial Assurance Review Meeting (FARM)**

The purpose of the financial assurance review meeting is to ensure that any concern, or challenge about charging made from the person receiving the service or their representative is reviewed.

The meeting will have a representative from operational group manager, corporate financial

services, ASCH contracts and compliance manager and the adult social care complaints manager. The meeting will review relevant information supplied by the responsible area service and group manager.

The meeting will consider any disputed financial assessment, charging, disability related expenses or third-party contributions and reach a decision.

The meeting will also consider where changes in individuals or third-party payor circumstances have changed which impacts their ability to continue to pay the agreed contributions.

### **Complaints Involving More Than One Organisation**

Where there is more than one organisation involved, ASCH will co-operate to provide a joint response in accordance with the [joint working agreement](#).

### **Complaints & Enquiries from Members of Parliament and Elected Members**

Enquiries from members of parliament (MPs) are answered by the cabinet member for ASCH, or the executive director for ASCH, depending on who they are addressed to. It is important that elected members or MP's seek consent from their constituent before sending the enquiry on to adult social care.

These contacts are usually received as enquiries sent to the Cabinet Member for ASCH to acknowledge and respond. Those sent to the executive director for ASCH will be acknowledged by the executive director and responded to by a member of the departmental management team (DMT) on behalf of the executive director.

If an elected member takes up a constituency matter through the cabinet member, then the reply should follow the same route as a MP's enquiry.

Constituency matters raised by elected members can be responded to by the most appropriate manager.

### **The Role of The Cabinet Member in Processing Complaints & Enquiries**

The cabinet member for ASCH will aim to respond to all correspondence received either directly to themselves, from other local councilors or an MP in accordance with the same deadlines as those being operated by the department for all complaints and enquiries.

If the matter is a complaint, then the response will also contain the contact details for the Local Government Social Care Ombudsman.

#### **Reporting**

The cabinet member receives an annual report on complaints in line with national regulations.

In addition to this, an interim report/s will be presented to the ASCH DMT.

### **Unreasonably Persistent Complainants & Unreasonable Behaviour**

The authority is committed to dealing with all complaints fairly and impartially and it would not normally limit contact that complainants have with its staff and its officers. However sometimes complainants can, due to the frequency of their contact, hinder the authority's consideration of

complaints.

It is important for ASCH staff to distinguish between people who make several complaints because things have gone wrong and people who make unreasonably persistent complaints. It is important to justify, where required, how this distinction was made.

If a member of ASCH staff believes that someone is an unreasonably persistent complainant, then the complaints manager for ASCH will need to consider whether the complainant is now inappropriately persistent. The complaints manager for ASCH will liaise with the group manager and agree with colleagues what action is appropriate in the circumstances.

ASCH will adhere to the [Procedure for Dealing with Unreasonably Persistent Complainants and Unreasonable Complaint Behavior](#) (please note section 9 does not apply to ASCH as it operates its own one stage process in accordance with this document).

### **Second Stage Complaint Review**

In the event the complainant remains unhappy and believes that their complaint has not been fully investigated and responded to, or has further information that needs to be considered, a second stage complaint review can be requested.

The complaints manager for ASCH will review the original complaint and the response and any additional information in determining whether a second stage complaint review is required.

Where a second stage complaint review is commissioned, the complaints manager will:

- where possible, meet with the complainant to agree the details of the complaint and explain fully the complaints process, identify the concerns of the complainant and understand what outcome the complainant would like to achieve from a review of the complaint
- appoint an investigating officer independent from the original service area

A full response to the complaint will be reviewed and this will usually be within 20 working days. In exceptional circumstances, this can be extended to 40 working days.

Following the conclusion of the second stage complaint review the complaints manager will meet with an assistant director to consider the second stage review to ensure learning or actions identified is completed in a timely manner, where appropriate.

At this point the complainant will be informed if any action is intended by the council and inform them that if they remain dissatisfied that they may go to the LGSCO for further consideration.

### **Complaints Not Dealt with Under This Procedure**

#### **Direct payments**

Complaints which are about support purchased with direct payments are excluded from the procedures once the client has:

- taken full control of their finances and the management of their care provision
- been told that they cannot use the statutory complaints procedure



This does not apply where the complaint is about the processes involved in setting up the support; for example, assessment, allocation of funds, or the support available to enable people to manage the payments.

### **Self-funders**

The [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) requires all care providers to have their own complaints procedure in place. All commissioned providers, whether covered by the Care Act or not, are required to have a complaints policy and procedure. All persons (and their representatives) using these services including self-funders, can access the provider's complaints procedure, and those persons using their services can access that procedure.

Complaints should initially be made directly to the provider themselves.

If the provider is registered with the Care Quality Commission, then the complaint could be shared with them.

The LGSCO has a responsibility to consider complaints in this category.

If the service is commissioned by a client with a direct payment, then if they are dissatisfied with the outcome of the provider's response they should, as with self-funders, be directed to the LGSCO.

This does not apply where the complaint is about any processes that the ASCH department has been involved in, for example the core assessment.

### **Independent social care provider**

Complaints about an independent social care provider should be made directly to the provider themselves.

If the complainant remains dissatisfied following their investigation, they can follow the DCC ASCH complaints procedure outlined in this document.

### **Provider that has a contract with DCC**

If there is a concern around the contract, then the provider must contact their contract manager in the first instance.

## **Alternative Policy and Procedures: Safeguarding and Human Resource Processes**

1. If the complaint is solely a safeguarding concern, then the council's safeguarding procedures should be followed. An acknowledgement should be sent to the complainant to confirm it will be considered as such. This should not be recorded as a complaint. If a complaint comes in specifically about the way the safeguarding procedure has been implemented, the complaints procedure should be used.
2. If the matter is both a safeguarding concern and a complaint about other issues, then an acknowledgement to the complainant should clarify that the complaint element will be considered as soon as reasonably possible but may need to await the outcome of safeguarding procedures. If there is no impact on safeguarding procedures the complaint can be investigated within a given timescale. This should be recorded and processed as a complaint.

3. It may be apparent at the outset, or become apparent during the complaint investigation, that the complaint may result in further action being taken within human resources policies and procedures. In this case, reassurance should be given to the complainant that the matter has been investigated and that it is more appropriate for internal human resources procedures to be followed. The complaint should then be closed.
4. If the matter is both a human resource related issue and a complaint about other issues, then an acknowledgement to the complainant should be sent to confirm it will be considered as soon as reasonably possible but may need to await the outcome of human resources procedures. If there is no impact on human resources procedures, then the complaint can be investigated within a given timescale. This should be recorded and processed as a complaint.
5. If the matter raised is a mix of potential human resources matters, complaints and safeguarding, then safeguarding procedures take priority and a combination of the above approaches should occur.
6. If a complaint is about the Derbyshire Safeguarding Adults Board (DSAB) process, Safeguarding Adult Reviews, publications, or campaigns then the matter will be processed using their own complaints policy and process. Complaints can be forwarded to [derbyshiresab@derbyshire.gov.uk](mailto:derbyshiresab@derbyshire.gov.uk)

It should be made clear to the complainant how we are dealing with the concerns they have raised and inform them of any relevant timescales ASCH are working to.

The following factors may also exclude a complaint from being dealt with under this procedure.

- a complaint made by a responsible body e.g., another authority
- a complaint by an employee of a local authority or NHS body about any matter relating to that employment
- a complaint which is made orally
- is resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint was made
- is a complaint which the subject matter is the same as that of a complaint that has previously been made and resolved in accordance with the above point
- is a complaint which the subject matter has previously been investigated
- is a complaint which the subject matter is being or has been investigated by:
  - a local commissioner under the [Local Government Act 1974](#) or
  - a health service commissioner
  - under the [Leasehold Reform, Housing Urban Development Act 1993](#)
- is a complaint arising out of the alleged failure by the authority to comply with a request for information under the [Freedom of Information Act 2000](#)
- is a complaint which relates to any scheme established under section 10 (superannuation of persons engaged in health services, etc.) or section 24 (compensation for loss of office, etc.) of the [Superannuation Act 1972](#), or to the administration of those schemes
- is a complaint relating to the employment of a personal assistant i.e.,

services purchased through a direct payment

### Quality Assurance

The quality team are responsible for monitoring the quality and recording of complaints data. The designated complaints manager should ensure performance of this is monitored.

- a record must be kept of each complaint received
- the action taken
- the outcome of each complaint
- whether there was compliance with the specified response time limits

Information about service enquiries and complaints resolved informally can be of equal value to the information about the number of formal complaints, and details of these should be available to the quality team.

The operation and effectiveness of the complaints procedure is monitored and regular information about numbers and types of complaints received, time taken to deal with them, and their outcome is presented to the directorate.

Information collected during the monitoring process and during individual complaints investigations and reviews will provide feedback on management and operational matters. Such as how policies are interpreted by staff and people who ASCH deliver services to, how effective communication is within the authority and to the public, where staff training is needed and whether resources are correctly targeted.

An annual report dealing with the operation of the complaints procedure is presented to the ASCH cabinet member. This report should be made available to the public on request. The report will include a summary of statistical and other information which may have been supplied at more frequent intervals as well as a review of the effectiveness of the procedure.

The annual report helps to inform the department's quality strategy for reviewing both the complaints process and for the implementation of improvements and corrective action at a corporate level and across organisational boundaries.

Any opportunities for learning gained from complaints and service enquiries will be shared across the department to maximise service improvements.

## Author History

### Approval and authorisation history

Approved by Dave Brown Head of Quality Assurance Oct 2007

### Change history

Version 1	Dave Brown	June 2007	Document created
Version 2	Jenny Hudson	March 2011	Review & update
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